



ASIAN-PACIFIC
POSTAL
UNION

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A legal framework to support the Asia Pacific Post Cooperative

Monday 14 August

Presentation by Australia

Executive Council Meeting
Bangkok, Thailand
14 - 18 August 2023

APP Cooperative - documents



- The Reform Working Group considered the legal and operational issues experienced by the APP Cooperative. This has included input from the APP Board Chair, the APP Managing Director and advice from the UPU legal adviser.
- The Reform Working Group has prepared the following documents:
 - EC 2023 Doc 13.7 – A legal framework to support the Asia Pacific Post Cooperative
 - EC 2023 Proposal – Resolution of a general nature 04
 - EC 2023 Proposal – Resolution of a general nature 05



APP Cooperative – EC 2023 process

- This item will be considered by the Executive Council and members of the Union over a number of sessions. This is to ensure all members are fully informed on the issues and have sufficient time to consider and form their position.
- The proposed approach is:
 - Today: explanation of the issue, ask questions, initial discussion
 - Wednesday: APP General Assembly meets
 - Friday: further questions, APP CMB may present the views of the APP following the APP GA, decisions expected
- Note: holding an Extraordinary Congress requires the consent of at least two-thirds of member countries and is not a decision to be taken by the Executive Council. Any members participating online will be able to vote on this issue if a vote is required.



EC Doc. 30B/Rev 1

APP Cooperative - background

- The APP is a body that consists of 28 postal operators of APPU member countries.
- The Executive Council took the 1998 decision to create the APP through a process that occurred outside the strict framework of the APPU treaties.
- This resulted in the creation of a body ultimately owned jointly by all Executive Council members but which was not a formal organ under the APPU's treaties, similar in structure to the EMS cooperative in a UPU context.
- This **does not** mean the creation of the APP was illegal or that the APP does not exist.
- However, the effect of this decision-making process means that the APP currently does not have any *legal personality* and therefore cannot hold funds in its own name, sign contracts, employ staff, or do other things in the normal course of its activities.

Resolution

Creation of the Asia Pacific Post (APP) Cooperative
The Executive Council

Considering

the comprehensive report on the APPU Strategic Direction prepared by the Steering Committee

Recognizing

that the APP should be the driving force and play a key role in the realization of the APPU Strategic Direction

Approves

the "Proposal regarding the Creation of the APP Cooperative" prepared by the Steering Committee

Decides

that the existing APP should be transformed into a Cooperative to be founded on the basis of the free and positive participation of regional postal administration in this endeavor

Instructs

the Steering Committee to finalize plans for this new arrangement with a view to the implementation of the APP Cooperative and to present a progress report to the next APPU EC meeting

Further decides

that, at the time of the creation of the Cooperative, sub-accounts within the APPU Special Activities Fund shall be established for the purpose of receiving monies in US\$ for the operation of the APP Cooperative and for the RSCAP. Half of the balance of the APPU Special Activities Fund shall at that time be transferred to each of these special sub-accounts

Urges

postal administrations of the Asian Pacific region to:

- make clear their intention to participate in the Cooperative
- decide their contribution unit which will determine their voting rights in accordance with the proposed method of financing
- communicate this decision to the Central Office as quickly as possible
- make their contribution of funds to the APPU Special Activities Fund
 - APP Cooperative
- study the possibility of dispatching "Associate expert(s)" at their own expense to the APP



APP Cooperative - issues

- These unintended issues have been largely out of sight from APPU member countries as a result of the generosity of Singapore Post to host the APP, employ its staff, and carry much of the liability for its activities.
- In December 2022 Singapore Post indicated it was unable to continue this arrangement following an internal review that identified many of the associated operational issues.
- Short-term workarounds to keep the APP operational are in place, but it requires a long-term solution as soon as possible.
- This issue has been extensively studied – by the APP itself since April 2022, and by the Reform Working Group since December 2022.
- For reasons outlined in the following slides, the only practical course is to amend the APPU's General Regulations to give the Executive Council the power to rationalise the APP's legal status as a formal part of the APPU.

APP Cooperative – solutions considered



- Since late 2022 (with work gathering pace in 2023), the Reform Working Group has worked with the Bureau and the CMB Chair to develop a solution. It was quickly realised that APPU member countries had three pathways:
 - **Option 1:** Amend the Acts of the Union to give the Executive Council the power to create the APP, based on the solution developed by the UPU for its user-funded subsidiary bodies, such as the EMS Cooperative, and for the Executive Council to retake decisions to establish the APP under the new power.
 - **Option 2:** Amend the Acts of the Union to establish the APP as a dedicated organ of the APPU and specify its functions, powers and processes in treaty.
 - **Option 3:** Create a separate treaty for the APP.

APP Cooperative – solutions considered



- The Reform Working Group, in considering the issue, also benefited from the advice of:
 - The APP, including on operational impacts;
 - The UPU Legal Adviser and head of the EMS Cooperative Unit
- After considering the issues, the Reform Working Group recommends **option 1**, the simplest model, for consideration by the Executive Council.

APP Cooperative – solutions discarded



- Options 2 and 3 were discarded as they created additional complexity for member countries without introducing additional benefits.
- Specifically:
 - **Option 2:** Specifying the APP as an organ of the APPU resolves the immediate problem but has undesirable outcomes, including the APP having less independence, having all APPU member countries be members of the APP, instead of DOs joining under a user-pays model, and not creating a mechanism for future bodies to be established.
 - **Option 3:** A separate treaty for the APP would make the APP a completely discrete entity. It is administratively burdensome to establish and would require governments to maintain it.
- Further options were also considered and set aside – namely to gain recognition in Singapore as an international body (requires legislative decisions), become its own Restricted Union (would require additional actions and likely take a long time to implement), and for the APP to be subsumed within the operations of SingPost (SingPost has advised this is not feasible).



APP Cooperative – proposed solution

- Implementation of the proposed solution has two parts – a legal (treaty) component, and a functional (governing documentation) component.
- There are three key decision points in this pathway: the 2023 Executive Council, the next Congress or Extraordinary Congress, and the associated Executive Council.
- The 2023 Executive Council will need to:
 - provide comment on the legal (treaty) component, and
 - agree a work program to develop the functional (governing documentation) component, noting that a decision on the functional (governing documentation) component can only be taken after a Congress amends the APPU treaties.

APP Cooperative – proposed solution – legal component



- The proposed amendment is to the General Regulations of the APPU, specifically to amend the functions and powers of the Executive Council.
- This would give the Executive Council the power to establish user-funded subsidiary bodies, funded by voluntary means, in order to organise operational, commercial, technical and economic activities within the competency of the APPU.
- Any subsidiary body established under this new power would obtain the benefit of the legal personality of the APPU, resolving the issues of contracting, bank accounts, and member country liability for the subsidiary body's activities.
- Subsidiary bodies would be independent insofar as their approach to delivering their mandate and day-to-day operations ("Functional Independence"). It would be to the discretion of the Executive Council to determine how the responsibilities are arranged.
- Example draft text is included at EC 2023 Doc 13.7 Add 3, noting this is not for decision but illustration purposes only.

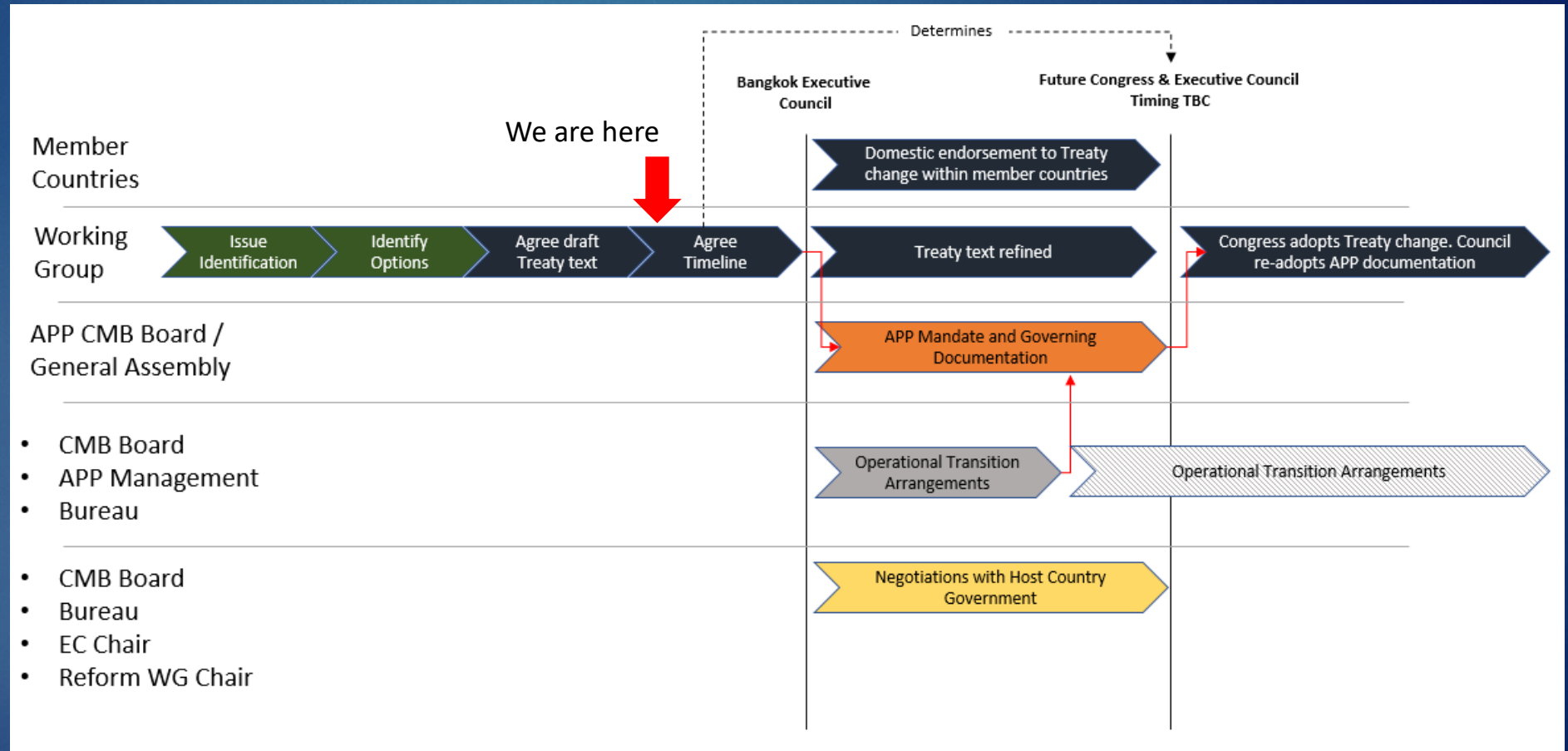


APP Cooperative – Workplan

For decision (on Friday 18 August 2023):

- **instruct** the Reform Working Group to continue refining the draft treaty text in conjunction with member countries, for consideration by a future Congress
- **instruct** the APP CMB to develop a draft Basic Framework, including the APP's governing documents, for possible adoption following the passage of the treaty amendment
- **instruct** the Reform Working Group to review the APP CMB's proposed Basic Framework and provide advice to a future EC
- **establish** a closed working group, led by the Secretary General, to finalise the APPU's legal status in the APP's preferred location with the government of that country
- **instruct** the Secretary General to work with the Chair of the APP CMB and the APP Managing Director on operational transition arrangements and to report annually to the EC

APP Cooperative – proposed solution – diagram



APP Cooperative – Draft Treaty Change



1. The Executive Council may establish user-funded subsidiary bodies, funded by voluntary means, in order to organise operational, commercial, technical and economic activities which fall within the competence of the Union, but which may not be financed from the regular budget of the administrative section.
2. Upon the creation of such a body by the Council, the Council shall decide on the basic framework of the rules of procedure of the body, taking due consideration of the fundamental rules and principles of the Union as a restricted union of the UPU. The basic framework shall include the following elements:
 - 2.1 the mandate;
 - 2.2 the body's location within the Asia-Pacific region;
 - 2.3 the constituency, including the categories of members participating;
 - 2.4 the body's internal structures and the body's relationship with the remainder of the Bureau and with other Union organs;
 - 2.5 composition of staff of the body, management structure and the internal processes for the management of such staff;
 - 2.6 voting and representation principles;
 - 2.7 financing.

APP Cooperative – Draft Treaty Change



3. A user-funded subsidiary body shall organise its activities in an autonomous manner within the basic framework decided by the Council, and shall prepare an annual report on its activities for consideration by the Council.

4. The Council shall establish the rules concerning support costs that user-funded subsidiary bodies must contribute to the regular budget of the administrative section, which shall include any expenditure on behalf of the subsidiary bodies.

Notwithstanding Article 117, the expenditure of each user-funded subsidiary body will be in accordance with a separate budget approved in the manner set out in the basic framework for the user-funded subsidiary body.

5. The staff of the subsidiary bodies shall be an integral part of the Bureau, assigned to the administrative section. The Director of the Bureau will administer the staff of the user-funded subsidiary bodies in the manner specified by the basic framework for the user-funded subsidiary body. The Executive Council may agree to departures from the Staff Regulations and General Regulations of the Bureau of the Asian-Pacific Postal Union for such staff if the circumstances so require.

6. Information concerning user-funded subsidiary bodies established in accordance with this article shall be reported to Congress following their establishment

APP Cooperative – proposed solution – functional component



- Amending the General Regulations to permit the Executive Council to create user-funded subsidiary bodies does not fully address the matter of the APP specifically.
- Further decisions of the Executive Council will be required to exercise that power once the power is adopted, likely at the EC meeting immediately following a Congress (i.e. the same time).
- Once the treaty amendment is adopted, to re-establish the APP the Executive Council will need to adopt a new resolution setting out the detail of the Basic Framework for the APP, including:
 - the mandate;
 - the body's location within the member countries of the Union;
 - the constituency, including the categories of members participating;
 - the body's internal structures;
 - composition of staff of the body and management structure, the internal processes for the management of such staff and the body's relationship with the remainder of the Bureau and with other Union organs;
 - voting and representation principles;
 - financing.
- This work would be undertaken, in the first instance, by the CMB Board and APP General Assembly, before being reviewed and presented to the Executive Council.
- Further detail is included in Proposal 04.



APP Cooperative – proposed solution – timing

- The current situation is presently directly impacting the operations of the APP, to the detriment of its members, APPU member country designated operators.
- It also poses challenges to APPU member countries, as the ultimate ‘owners’ of the APP. The APP CMB has a desire to resolve the situation as quickly as possible.
- The Reform Working Group agreed to present two timing options to the Executive Council. The first option would see an Extraordinary Congress held in conjunction with the 2024 Executive Council meeting. The second option would see the matter deferred to the regular Congress in 2026.
- Proposal 05 is the relevant document to give effect to holding an Extraordinary Congress, if the members decide to do so.
- Other options have been considered and determined to be infeasible (such as, an Extraordinary Congress on the sidelines of the UPU Extraordinary Congress in Riyadh in October 2023 or an Extraordinary Congress in 2025).

APP Cooperative – proposed solution – Extraordinary Congress



Article 10 Extraordinary Congresses (Constitution)

An extraordinary Congress may be held at the request or with the consent of at least two-thirds of the member-countries. Unless it is unavoidable, this session should be held in conjunction with the Executive Council meeting.

APP Cooperative – proposed solution – Extraordinary Congress



The Executive Council,

- **recognising** the urgent need to resolve the legal status of the Asia Pacific Post Cooperative in order to ensure its continued operations for the benefit of postal operators in the region,
- **considering** the need to address this issue in a manner that provides sufficient time for member countries to consider amendments to the Acts of the Union while minimising costs and resourcing impacts on the Union,
- **noting** the need for amendments to the Acts of the Union to fully address this issue,
- **decides** under Article 10 of the Constitution to hold an Extraordinary Congress in order to address the issue of the legal status of the Asia Pacific Post Cooperative, as well as other urgent postal sector issues,
- **further decides** under Article 105(8) of the General Regulations that the Extraordinary Congress will be held in conjunction with the 2024 Executive Council at the place so nominated to host the Executive Council, and
- **instructs** the Bureau to work with the host country of the 2024 Executive Council to take all the necessary measures to organise the Extraordinary Congress.



Questions?